

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
Creation of a Low Power Radio Service) MM Docket No. 99-25
) Report No. 2950
) MB Docket No. 07-172
) RM-11338
) FCC12-29

To: The Commission

Reply to Comments

Background:

The Prometheus Project and the Unitarian Church have each requested that the FCC add a requirement for up to 8 hours per day of local program origination for all future LPFM licenses. They have also requested that a preference be given to prospective licensees that propose to maintain local studios with a meaningful staff presence. It should be pointed out that Prometheus is a self-proclaimed LPFM advocate, but they do not represent the majority of LPFM broadcasters. In fact, the majority of existing LPFM stations operate quite differently than the model that Prometheus promotes.

Discussion:

In our community, we have five licensed LPFM stations. Two of the five are dedicated to religious teachings. They play programs that are not locally originated, yet each program is unique and not offered on any other radio station. Another station, owned by a church, primarily plays African-American gospel music with some religious teachings. Again, this programming is not available on another FM station. A fourth LPFM station here plays an automated oldies format. Oldies are not available on any other station here. The last station is operated by a private library organization, loosely associated with Prometheus.

Although much of the stations programming is live, quite a bit is also canned. If we expand our search out to other LPFM stations within 50 miles, all of them are primarily engaged in bringing some alternative or experimental format to the public but there is no major emphasis on any sort of locally originated programming, yet these stations all provide novel programming choices to the public. Some are quite experimental, making programming choices that could never be tried on a commercial station. Each of these

stations have dedicated and loyal listeners and most of them are entirely supported by their owners or governing boards and by occasional listener contributions that, when aggregated, usually don't even cover the electric utility costs. To describe these patrons of the airwaves as somehow less desirable than other LPFM broadcasters simply on the basis of local program origination is not only wrong, it is insulting to the many volunteers that work tirelessly at providing specialized formats which they believe benefit their communities.

The argument being put forth to the FCC is that a primary reason for existence of LPFMs is to provide local programming and, presumably local access to the airwaves to the public for those that propose to have locally staffed studios. I strongly disagree that this is a primary, or even a major function. I believe that the primary function of LPFM stations is to bring unique programming to a community that is not otherwise available through full power radio stations. Local programming is pretty far down on the list of desirable features of an LPFM, but local CONTROL is a very desirable feature. However, local control is already assured by the existing LPFM rules. The most important aspect of LPFM stations is not local origination, it's local decision making. Decisions about localism are best left to the local operators. I believe that even local control has to take a secondary position behind bringing new service to a community, however that is a discussion best left to a future proceeding.

The position advocated by Prometheus and others is an attempt to limit competition for future LPFM licenses. It's essentially a land grab and an attempt to restrain competition for future licenses. By making onerous rules about local program origination, it forces prospective LPFM licensees to reconsider applying for stations and dramatically increases the risk of failure for those that do. This policy, were it to be enacted, would have the exact opposite effect to the stated desired goal of increasing diversity of control and local access. Large organizations such as mega-churches and political organizations will be able to fulfill the requirements easily, but it keeps smaller entities from being viable competitors for the LPFM spectrum, thus limiting the diversity of voices. In other words, this would limit the ability of the smaller churches and other would-be secular broadcasters to be on the air.

If the desired effect is to promote local programming in response to community needs, I can think of nothing more limiting than a proposal such as this that throws open the doors to letting large non-profit corporations dominate the LPFM airwaves. The argument might be raised that potential LPFM licensees that are not willing to have local programming or staffed studios simply should indicate on their applications that they will not be claiming points for those options. Although true, the result is still that larger, better funded entities will get the channels on points, so the result is still a loss of smaller community voices.

Locally produced content is often amateurish and inferior to professionally produced offerings that are already available which convey the same teachings or content. Poorly produced local programming drives away listeners and benefits nobody. Within the past two weeks, I personally listened to a locally produced broadcast originating on one of our LPFM community stations. The broadcast consisted of a badly recorded or live performance of a song by Cat Stevens, possibly recorded on a cellphone. Periodically, the song would stop for a moment and some unintelligible muttering could be heard. The song would then resume for a period of time. A companion and myself shook our heads and went to lunch. When we returned to the car an hour later, the broadcast was continuing, still playing the same Cat Stevens song. No matter how hard I tried nor how loud I turned up the radio, we could not make out more than a few words that were being spoken between bars of the song. The LPFM station that originated the broadcast produces quite a few local programs and changes formats with each hour in order to accommodate diverse groups. This station has had ties to Prometheus and undoubtedly represents one of the primary types of stations advocated by them.

While many of its programs are well produced, quite a few are poorly produced and a few exceed poor by quite a large margin. I do not fault them for airing anything that they believe is beneficial to the community, but I would suggest that airing poorly produced content or airing content that is uninteresting just for the sake of localism does not generally benefit the public. The public is better served when programs are interesting and well produced, regardless of where they are originated. This is far more useful and to the point of what LPFM should be than is "localcasting" done badly.

No other class of station is required to originate local programming. LPFM stations usually have very small volunteer staffs (sometimes only one) and would not have resources to staff a studio or to produce very much local programming. This does not lessen the value or service of the LPFM station to the community. Since many of the organizations running LPFM stations tend to be small and poorly funded, this proposal would place a dire burden on a group of broadcasters that will already struggle to keep the stations on the air.

Individual radio stations often have a particular message to deliver. By requiring local origination, we limit diverse voices and actually reduce the service to the community. Since the smaller voices will be silenced first, the airwaves will be left to larger organizations that can afford to fill the time locally. This effectively works as a tool to retain the LPFM service for the (more or less) exclusive use of larger non-profit corporations, resulting in less balanced coverage of local issues.

2nd channel Adjacency Waivers:

In an ex-parte notice dated November 20, 2012, The NAB discloses that they are asking the FCC to require LPFM applicants seeking 2nd channel waivers to notify the affected full powered stations in advance so that the full powered stations can "review and potentially improve the engineering showing provided by the LPFM applicant". NAB cites comments filed by Educational Media Foundation (EMF) which state that "as many as 5% of EMF's translators must cease operations or otherwise correct interference problems". What is not stated or known is what percentage of EMF's translators have actually been turned off due to an inability to mitigate interference. I believe the answer is relatively few of EMF's translators have been forced off the air due to generated interference because the D/U ratio analysis used by the Commission is well established with a proven track record. In cases where interference occurs, it is almost always possible to mitigate the problem when another transmitter site, closer to the affected station is available. Thus, while it is foreseeable that there will be initial interference issues in a very small percentage of cases, most of the time the interference can be resolved by modification rather than to cease operation completely. Moreover, it is illogical to assume that a 100 Watt LPFM station can cause the same level of harm as a 250W translator. Even if LPFM stations were granted a power increase to 250W, the interference issues would be no worse than translators, which the NAB does not oppose. If the NAB wants to oppose the blanket use of 2nd channel waivers for LPFM stations, then they should explain why they do not oppose their use for translators. In fact, fill-in translators have a far greater potential for creating harmful interference because there is no height limitation. There are translators on the air now that rival class A stations' coverages. Additionally, the use of adjacent channel waivers is commonly used in the reserved portion of the FM band for many full power stations where small amounts of interference is actually predicted but mitigated by potential expanded service as specified in Educational Information Corporation, 6 FCC Rcd 2207 (1991). NAB and NPR do not oppose the use of waivers in this case where potential interference is far greater and is known to exist. To hold LPFM stations to a higher standard than other classes of similar stations is simply to deny the laws of physics for the sake of politics.

In cases where actual interference does occur, a change in antenna or power level can often be used to mitigate interference for translators. While alternate power options are not currently available for LPFM stations, a scaled power approach, similar to translators, would be a benefit to those facilities seeking interference mitigation. The Commission could choose to consider a waiver policy allowing those few stations causing interference to reduce power to level sufficient to eliminate the problem.

On the surface, the NAB suggestion appears to have merit, but there is potential for harm as well. If the purpose for notifying a potentially affected station is simply to give that station a chance to work with the LPFM applicant to improve the engineering, that

would be one thing, provided that the affected station could not object to the processing of the LPFM's properly engineered application. However, in my work as an engineering consultant, I have had the opportunity to discuss the current Thin-Air waiver possibilities with a number of full service station operators. In my experience, they all oppose granting a waiver request unless there is something to be gained by them. I have been repeatedly asked the simple question: "What's in this for me?". It would be reasonable to assume that most stations presented with a notice of proposed 2nd channel waiver request will attempt to fight the waiver, or at least stall the processing.

Yet, at the same time, a translator, potentially operating at a higher power level and possibly even a far greater HAAT currently requires no prior notice to the affected station. It is the FCC's role to decide if any individual application has an undue prospect to cause interference and that should not become the domain of full service radio stations which, generally, have an adversarial position regarding LPFM stations.

Support for LP-50 stations:

Assuming that the Commission has the authority under the LCRA to establish an LP-50 class of station as described by Amherst Alliance as being anything from 1-50 Watts, I would support that concept. If the FCC cannot or will not establish an LP-50 class that can be scaled down to 10W or less, then the LP-10 class should be allowed to proceed. In comments filed earlier in MM99-25, I submitted engineering studies of multiple large markets demonstrating how LP-10 stations could operate where LP-100 stations would be prohibited. Our investigation found that LP-10 stations in the top markets can reach extraordinary numbers of people. In some cases, populations served exceed 500,000 and we found many examples where population coverage well exceeded 100,000. Extensive discussion about the LP-10 class of service was made in comments filed by me in this proceeding on May 08, 2012 and I hereby reference those comments as still relevant to this continuing proceeding. Prospective licensees with mutually exclusive applications for LP-100 stations may also be able to downgrade by mutual consent so that each applicant gets their own station rather than be forced to time-share. Should a lower class of LPFM service be authorized, there should be an easy upgrade/downgrade path for LPFM applicants and licensees.

Support for LP-250 stations:

I support a 250W class of LPFM station with the following caveats:

1. They should not be limited to rural areas. In fact, they are potentially very useful in urban settings because potential listeners in cities often travel extensively during the day. If the radio station does not effectively cover home and work, then the listener has no choice but to find another outlet or stop listening.

2. For the next window LP-250 should be available only as an upgrade and not as a class that can be applied for initially. The purpose of this restriction is to allow as many LPFM stations as possible to co-exist on co-channels and adjacencies as possible. In cases where spectrum for the upgrade is possible after a filing window, then applications for upgrades can be received on a first come, first served basis. While this approach adds a step for LPFM licensees, it also preserves the maximum number of licensing opportunities within a community.

Use of waivers and newly opened channels to diversify time-shared stations:

There exist a small number of LPFM time-shared stations that were, mostly formed out of competition for

limited available spectrum. Many of these have been on the air, serving the public interest under difficult circumstances for years. When new spectrum becomes available, as may be the case when and if second adjacency waivers become available to LPFM applicants, these stations should be allowed to apply for the newly available channels before any public filing window for the purpose of seeking individual channels for use by the separate licensees. Adding the option for time-shared stations to downgrade in order to gain a full-time service on another channel would also be attractive to many.

Respectfully Submitted,

Kyle Magrill